

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6533

BILL NUMBER: HB 1318

NOTE PREPARED: Jan 30, 2004

BILL AMENDED: Jan 29, 2004

SUBJECT: Medicaid Overpayments and Competency Restoration.

FIRST AUTHOR: Rep. Becker

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
DEDICATED
X FEDERAL

IMPACT: State

Summary of Legislation: (Amended) *Interest Payments:* This bill provides that certain Medicaid providers who have been overpaid do not owe the state interest. It also eliminates interest payments by the state to providers.

Incompetence to Stand Trial Provisions: The bill also provides that a third party who contracts with the Division of Mental Health and Addiction may: (1) provide competency restoration services; and (2) initiate a regular commitment proceeding. It also requires a defendant committed to the Division who subsequently attains competency to be immediately returned to the court for trial unless the provider of restoration services files a petition objecting to the immediate return. This bill also provides that a psychologist or psychiatrist appointed in a competency hearing may not be an employee or a contractor at a state institution.

Effective Date: July 1, 2004.

Summary of Net State Impact: (Revised) *Interest Payments:* This bill eliminates the obligation of both the provider and the state to pay the interest charge associated with overpayments. According to the Office of Medicaid Policy and Planning, the total amount of interest payments accrued from providers in FY 2003 for this purpose was about \$500,000. The amount of interest the state owed providers for that year was about \$10,000. Thus, the net amount of interest that would be forgone by the state is estimated to be \$490,000 per year, of which the federal government will receive its share. The amount of interest charges can vary significantly each year. This also assumes that there is no change in Medicaid payment processes as a result of the elimination of interest charges for overpayments.

The state's share of this net interest revenue forgone is about 38%, or about 186,000. The federal government would receive the balance.

Incompetence to Stand Trial Provisions: The bill would affect the expenditures of the Department of Corrections (DOC) and the Department of Mental Health and Addictions (DMHA). Total state expenditures would not likely be significantly affected if the number of defendants found incompetent to stand trial remained relatively low. The expenditures that would be affected would likely fall within existing department appropriations and/or be shifted between the two departments. The DMHA, however, reports that additional funding will be necessary if the number of defendants significantly increases.

This bill allows the DMHA to contract with third-party entities to provide services for defendants in either a residence, community setting, or correctional facility. It is likely that a slight decrease in expenditures will be realized by the DMHA if a contract is for services in either a residence or community setting. However, if the services are provided in a correctional facility, the DMHA would likely experience an increase in expenditures. The bill would affect very few defendants. Thus, any increases or decreases in expenditures would be minimal.

This bill also allows a defendant's service provider to petition the court to retain the defendant (instead of returning them to court) and provide additional services. The DMHA may assume additional expenditures for providing the extended services. Furthermore, the DOC may observe a slight reduction in expenditures. The DMHA would absorb the cost of housing the defendant. The DMHA reports that this bill will only apply to approximately 1% to 2% of defendants, and so any increases or decreases in expenditures would be small.

Explanation of State Expenditures: (Revised) *Incompetence to Stand Trial Provisions:* Current statute requires the DMHA to confine a defendant to a state institution if (1) they are not competent to stand trial or (2) their competence to stand trial is questionable. This bill allows the DMHA to contract with third-party entities to provide restoration services in alternative venues. Contracted restoration services may be provided to defendants (1) in the location where the defendant currently resides or (2) in the least restrictive setting appropriate to the needs of the defendant. The latter includes correctional facilities.

Current statute also requires a defendant whose competence to stand trial was previously questioned to be returned to court after their competence has been certified by the DMHA. The bill would allow the DMHA (or a DMHA-contracted entity) to petition the court to postpone the return of a defendant.

DMHA and DOC budgets: Total state appropriations for the DMHA for SFY 2004 are \$273 M; the DOC was appropriated \$136.7 M. Any impacts on the DOC or the DMHA expenditures would (1) fall within existing department appropriations, and/or (2) shift between the two departments.

The DMHA, however, reports that additional funding will be necessary if the number of defendants found incompetent to stand trial significantly increases.

Contracting Costs: Contract amounts for the DMHA vary depending on the level of services a defendant requires. Furthermore, the cost to contract for services (where the defendant is currently residing or in a community setting) would be either equal to or slightly less than the cost to provide services in a state institution. Reductions in expenditures would likely be a result of lower housing costs. The DMHA, however, reports that decreases in expenditures would be minimal; this bill would apply to very few defendants. There are approximately one hundred defendants residing in state institutions (for incompetence to stand trial issues). Of these defendants, approximately five would be affected by this bill. Reduced expenditures to the DMHA are dependent on the number of defendants housed in residential or community settings and their contract costs.

Department of Corrections: Current statute requires defendants who are found incompetent to stand trial to

be moved to a state institution. State institutions, however, do not have the ability to house high-security inmates. This bill would allow the DOC to retain the defendant in the correctional facility. In addition, it allows the DMHA to either contract for services for the defendant or provide services themselves. Expenditures for housing the defendant would be shifted from the DMHA to the DOC.

The DMHA reports that contracting for services at a correctional facility would likely be more expensive than to provide services at a state institution. Defendants residing in correctional facilities would probably require a higher level of services. For example, the use of a forensic psychiatrist is often necessary. Forensic psychiatrists provide specialized services, thus, their contracts will likely be negotiated at a higher rate than that of other psychiatrists. Furthermore, there are only a few forensic psychiatrists in Indiana; contracts may need to include travel expenses. It is likely that the forensic psychiatrists will not reside in close proximity to the defendant.

Currently, there are two defendants in correctional facilities that this bill would apply to. Increases in expenditures for the DMHA are dependent on the number of defendants affected by this bill and the cost to contract for services needed.

Director or Medical Director Petitions: This bill also allows the director or medical director of the entity (1) from which the defendant is receiving competency restoration services or (2) to which the defendant has been civilly committed, to submit a petition to postpone the return of the defendant to court. This would allow the DMHA to retain the defendant and provide additional services. A defendant may be retained for six months, less any time the defendant has already received services. The DMHA would assume additional expenditures for housing the defendant and providing treatment. The DOC would realize a decrease in expenditures. The cost to house the defendant during the additional time period would be absorbed by the DMHA. The DMHA reports that this may occur one or two times a year, thus, increases in expenditures for the DMHA and decreases in expenditures for the DOC would be minimal. Actual increases and decreases in expenditures are dependent on the number of defendants who are retained and the length of time that they are retained.

Background Information: A defendant is considered competent to stand trial if (1) they have the ability to understand the proceedings and (2) they have the ability to participate in their own defense. The average cost to house a resident in a state institution is approximately \$350 per day. The cost to house a male inmate is between \$48.06 (minimal security) and \$83.78 (maximum security) a day. The cost to house a female inmate is \$188.29 a day. Differences in housing costs are mainly due to additional mental health services provided to defendants residing in state institutions and excess capacity in the state institutions.

Explanation of State Revenues: (Revised) *Interest Payments:* Currently, if providers receive overpayments from the state Medicaid program, the provider is to repay the amount of the overpayment plus interest from the date of the overpayment. If a provider repays the alleged overpayment to the state, but after a hearing it is determined that the provider does not owe the money, the state is to return the money to the provider along with the provider's interest payment with interest calculated from the provider's date of repayment. The interest rate is the same rate that is used by the Department of State Revenue.

This bill eliminates the obligation of both the provider and the state to pay the interest charge. According to the Office of Medicaid Policy and Planning, the total amount of interest payments accrued from providers in FY 2003 for this purpose was about \$500,000. The amount of interest the state owed providers was about \$10,000 in FY 2003. The net amount of interest that would be forgone by the state is estimated to be \$490,000 per year, of which the federal government will receive its share. This also assumes that there is no change in Medicaid payment processes as a result of the elimination of interest charges for overpayments.

The state's share of this net interest revenue forgone is about 38%, or about 186,000. The federal government would receive the balance.

Incompetence to Stand Trial Issues: See Explanation of State Expenditures.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Office of Medicaid Policy and Planning; Department of Mental Health and Addictions; Department of Corrections.

Local Agencies Affected:

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